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UNITED STATES OF AMERICA

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

UNITED STATES OF AMERICA,

Plaintiff,

vs.

MICHAEL J. MISKE, JR., (01)
aka "Bro,"
JOHN B. STANCIL, (02)
DELIA FABRO-MISKE, and (12)
JASON K. YOKOYAMA, (13)

Defendants.

CR. NO. 19-00099 DKW-KJM

UNITED STATES' MOTION *IN LIMINE* TO ADMIT BUSINESS
RECORDS OR SUMMARIES
THEREOF PURSUANT TO RULES
OF EVIDENCE 902(11), 803(6) and
1006; CERTIFICATE OF SERVICE

UNITED STATES' MOTION *IN LIMINE* TO ADMIT BUSINESS RECORDS
OR SUMMARIES THEREOF PURSUANT
TO RULES OF EVIDENCE 902(11), 803(6) and 1006.

Pursuant to Rule 902(11) of the Federal Rules of Evidence, the United States hereby gives notice of its intention to introduce certain certified business records into evidence at trial pursuant to Rules 902(11) and 803(6) without extrinsic evidence of authenticity. The business records include, but are not limited to, bank records, telephone records, tax records, accounting records, medical records and internet service provider records obtained pursuant to subpoena or other official legal process.

The United States will provide a declaration from the relevant custodians of records certifying the business records are accurate, timely made and kept in the course of regularly conducted activity by a person with knowledge of those matters. The United States will move to admit the business records (or summaries thereof pursuant to Federal Rule of Evidence 1006) into evidence on the basis the records are self-authenticating records pursuant to Federal Rules of Evidence 902(11) and 803(6).

The Government will specify the precise documents it intends to admit at trial in its Exhibit List to be filed with the court on or before December 11, 2023.

The admission of these business records in this manner will eliminate the significant expense and resources required to call custodians of records, many from the mainland, to testify simply to lay an extrinsic foundation for the authenticity of the records. Likewise, valuable court and trial time will also be preserved by eliminating the necessity of calling the custodians of records as witnesses at trial.

The Government expects some of these records to be voluminous in nature.

Rule 1006 of the Federal Rules of Criminal Procedure provides:

The contents of voluminous writings, recordings, or photographs which cannot conveniently be examined in court may be presented in the form of a chart, summary, or calculation. The originals, or duplicates, shall be made available for examination or copying, or both, by other parties at reasonable time and place. The court may order that they be produced in court.

Summary charts are an accepted means of presenting and introducing voluminous evidence, i.e. bank records, which cannot be conveniently examined in court. *See United States v. Aubrey*, 800 F.3d 1115, 1130 (9th Cir. 2015); *Goldberg v. United States*, 789 F.2d 1341 (9th Cir. 1986); *United States v. Johnson*, 594 F.2d 1253, 1255 (9th Cir. 1979).

In the presentation of its case-in-chief, the Government may seek to offer summaries of certain business records to establish various elements of the charged counts in the Third Superseding Indictment and which implicate one or more of the defendants proceeding to trial. All of the underlying business records are admissible pursuant to Federal Rule of Evidence 902(11), but because of their voluminous and/or technical nature, may not be easily examined in court. The summaries will set forth the relevant information in those records in a manner that is both accurate and more easily digestible for the jury. The vast majority of these business records were previously produced as discovery. Any outstanding records the Government receives will be produced to the defense forthwith. The

Government will identify the proposed summaries it intends to admit at trial in its Exhibit List to be filed with the court on or before December 11, 2023.

The Ninth Circuit has found no abuse of discretion where summary charts were admitted into evidence. *United States v. Meyers*, 847 F.2d 1408, 1411 12 (9th Cir. 1988); *United States v. Poschwatta*, 829 F.2d 1477, 1481 (9th Cir. 1987). In fact, summary charts have also been routinely held admissible under Rule 611(a). See *United States v. Gardner*, 611 F.2d 770, 776 (9th Cir. 1980) (summary chart admissible in tax evasion case under Rule 611(a) because it “contributed to the clarity of the presentation to the jury, avoided needless consumption of time and was a reasonable method of presenting the evidence”).

Accordingly, the Court should admit the relevant business records and/or summaries thereof without extrinsic evidence of authenticity.

DATED: November 13, 2023, at Honolulu, Hawaii.

CLARE E. CONNORS
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District of Hawaii

By /s/ Mark A. Inciong
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CERTIFICATE OF SERVICE

I hereby certify that, on the date noted below, the true and correct copy of the foregoing was served on the following at their last known address:

Served Electronically through CM/ECF:

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DATED: November 13, 2023, at Honolulu, Hawaii.

/s/ Tiani Kaneakua
U.S. Attorney's Office
District of Hawaii